

United States Senate
WASHINGTON, DC 20510-4105

December 8, 2022

The Honorable Daniel B. Maffei
Chairman
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573

RE: Federal Register Docket No. 22-24

Dear Chairman Maffei:

We write regarding the Federal Maritime Commission's recent notice of proposed rulemaking (NPRM) establishing a definition of unreasonable refusal by an ocean common carrier to deal or negotiate with respect to vessel space accommodations¹, consistent with the requirement established in section 7 of the *Ocean Shipping Reform Act of 2022*.² The Commission's implementation of this requirement is crucial to ensuring American exporters and importers alike have fair and competitive access to the global shipping market.

Congress passed this landmark legislation, signed into law in June, to make it easier for American farmers and manufacturers to ship ready-to-export goods left waiting at our ports and to limit foreign ocean carriers' ability to impose added fees on container handling. Section 7 of the Act sought to clarify that an "unreasonable" refusal by an ocean carrier to provide vessel space accommodations should constitute a prohibited practice under the *Shipping Act of 1984*.³ The need to require such a clarification arose specifically from reports of ocean carriers refusing certain export cargo – particularly agricultural cargo – even when vessel space was readily available, often opting to carry empty containers instead.

In order to ensure the law is faithfully implemented in a manner consistent with congressional intent, the definition of "unreasonable" must adequately take into account both transportation and commercial-related factors when evaluating the behavior of an ocean carrier. We agree with the Commission's view that "commercial convenience alone is not a reasonable basis" for refusal by an ocean carrier to deal or negotiate.⁴ However, we have questions about the breadth of the "transportation factors" under the proposed rule. In particular, an ocean carrier might point to the "existence" of "scheduling considerations" as a basis for refusing to negotiate with a would-be exporter. We urge you to consider whether additional clarifying language about the magnitude of the "transportation factors" might provide useful guidance to industry and align

¹ *Definition of Unreasonable Refusal To Deal or Negotiate With Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier*. 87 FR 57674 (September 21, 2022) (to be codified at 46 CFR Part 542).

² P.L. 117-146

³ P.L. 98-237

⁴ 87 CFR 57674

with the goal of promoting an efficient, competitive, accessible, and affordable global shipping market, consistent with congressional intent.


Thoroughly defining what constitutes the “unreasonable” refusal to deal or negotiate with respect to vessel space accommodations is a crucial component of our landmark shipping reform law. We greatly appreciate your attention to this issue and applaud your continued work to speedily implement the provisions of the *Ocean Shipping Reform Act of 2022*.⁵ Should you have any questions, please do not hesitate to contact our staff.

Sincerely,


JOHN THUNE
United States Senator


AMY KLOBUCHAR
United States Senator


JOHN HOEVEN
United States Senator


TAMMY BALDWIN
United States Senator

⁵ P.L. 117-146